

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICHELLE B. SURDAK READ,

Plaintiff,

-against-

TOWN OF RAMAPO POLICE DEPT.; P.O.  
BUCKLEY; P.O. FERGUSON; A.D.A.  
VERONICA PHILLIPS,

Defendants.

22-CV-3044 (LTS)

ORDER TO AMEND

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under 42 U.S.C. § 1983, asserting claims in connection with a “domestic incident.” Plaintiff names as defendants an Assistant District Attorney and two police officers and brings claims for “illegal seizure of evidence” and “sexual harassment.” The complaint refers to Plaintiff Michelle Read in the third person, and thus raises doubts as to whether she authored the complaint.

By order dated April 15, 2022, the Court granted Plaintiff’s request to proceed *in forma pauperis*, that is, without prepayment of fees. For the reasons set forth below, the Court grants Plaintiff leave to file an amended complaint within 60 days of the date of this order.

**STANDARD OF REVIEW**

The Court must dismiss an *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see* *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they *suggest*,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

### **BACKGROUND**

The following facts are taken from the complaint. On April 4, 2021, there was a “domestic incident” at Plaintiff Michelle Read’s home at 114 Pondview Drive in Rockland County, New York. (ECF 2 at 2, 5.) Plaintiff went to Good Samaritan Hospital. While she was there, Police Officer Buckley took photographs of her “alleged” injury. (*Id.* at 4.) Plaintiff was told to call police officers after she was discharged from the hospital to “finish signing the

charges.” (*Id.*) Plaintiff was discharged at about 9:20 p.m., and called the officers when she was home. The officers came back to the house.

The complaint notes that Police Officer Ferguson testified to a Grand Jury that he and Officer Buckley “did not locate the suspect there” at the house and that they “were unable to locate the weapon that was used,” but Police Officer Buckley “took photographs of the victim[']s injury.” (*Id.* at 7.)

Some portions of the complaint appear to be written by someone other than the Plaintiff. The complaint includes arguments that Police Officer Buckley “deliberately disregards to Mrs. M. Reads right to privacy. Used photographs depicting her undergarments, and allege injuries she sustained by whatever way she did.”<sup>1</sup> (*Id.* at 9-10.) The complaint also suggests that Plaintiff may herself have caused the injuries that she sustained: The photographs do not “fairly and accurately depicted the victims condition at the time she was seen at hospital. 4 ½ hours go past. Such an allege victim with mental health issues could have made self injuries. Mrs. M. Reads diagnosis supports this finding.” (*Id.* at 10.)

There are also arguments in the complaint that Plaintiff’s statements to police should have been deemed inadmissible in criminal proceedings because they did not qualify as “excited utterances,” given the length of time between the alleged assault and the statements. (*Id.* at 11.) The complaint refers to additional Grand Jury testimony and arguments made in motions (“See Respondents Response to Omnibus Motion”) (*id.* at 8), which may refer to recent criminal proceedings for David Paul Read.<sup>2</sup>

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<sup>1</sup> The spelling and punctuation in this and other quoted material is from the original.

<sup>2</sup> According to public records, David Read has pending criminal charges in *People v. Read*, 70335-21, in connection with his arrest on assault and weapons charges on April 4, 2021, which is the same date as the incident giving rise to Plaintiff’s claims. Assistant District Attorney Phillips, who is named as a defendant in this action, is the prosecutor in those criminal

## DISCUSSION

A nonattorney may not appear *pro se* on behalf of any other party. Under 28 U.S.C. § 1654, parties in federal court “may plead and conduct their own cases personally or by counsel.” The statute “recognizes that an individual generally has the right to proceed *pro se* with respect to his own claims or claims against him personally” or to be represented by a licensed attorney. *Berrios v. N.Y.C. Hous. Auth.*, 564 F.3d 130, 132 (2d Cir. 2009). The right to proceed *pro se* does not extend to “an individual who is not licensed as an attorney” who appears on another person’s behalf. *United States v. Flaherty*, 540 F.3d 89, 92 (2d Cir. 2008).

As an initial matter, many of the allegations in the complaint appear to have been written by someone other than the named Plaintiff. For example, the complaint refers to Plaintiff in the third person: “Mrs. M. Read was scared and stated to me this.” (ECF 2 at 9.) Although the complaint is signed in the name of Michelle Read, it is not clear that she is prosecuting this action.

Moreover, many of the allegations in the complaint do not seek to vindicate Plaintiff Michelle Read’s rights. The allegations that Plaintiff injured herself, that her statements are unreliable, and that evidence of her injuries should have been suppressed in the criminal proceedings against her assailant do not appear to be claims that Plaintiff is bringing on her own

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proceedings. Read’s omnibus motion was granted in part on January 19, 2022. *See also Read v. Arresting Officers*, No. 13-CV-3992 (LAP) (S.D.N.Y. June 10, 2013) (Complaint, ECF 1 at 35) (suit against police officers who arrested David P. Read on allegations that he “threaten[ed] Michelle Surdack-Read,” in violation of order of protection issued to her on 8/03/2006); *Read v. Thompson*, No. 13-CV-3661 (KMK) (PED), 2016 WL 165715, at \*9 (S.D.N.Y. Jan. 13, 2016) (denying § 2254 petition challenging David P. Read’s 2010 conviction for violating order of protection, noting that he had “submitted two documents purportedly from Ms. Read in support of his claim of actual innocence” but that the evidence was not reliable and did not make out a “compelling” case of actual innocence in light of other evidence).

behalf. Because an individual can only proceed *pro se* on her own behalf, if Plaintiff Michelle Read wishes to bring a complaint, she can pursue only her own claims. The Court therefore grants Plaintiff leave to amend her complaint to pursue her own claims. No non-attorney can bring suit on Plaintiff's behalf.

### LEAVE TO AMEND

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts “should not dismiss [a *pro se* complaint] without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). Because Plaintiff may be able to allege additional facts to state a valid claim, the Court grants Plaintiff 60 days' leave to amend her complaint to detail her claims.

Plaintiff is granted leave to amend her complaint to provide more facts about her claims. In the “Statement of Claim” section of the amended complaint form, Plaintiff must provide a short and plain statement of the relevant facts supporting each claim against each defendant. If Plaintiff has an address for any named defendant, Plaintiff must provide it. Plaintiff should include all of the information in the amended complaint that Plaintiff wants the Court to consider in deciding whether the amended complaint states a claim for relief. That information should include:

- a) the names and titles of all relevant people;

- b) a description of all relevant events, including what each defendant did or failed to do, the approximate date and time of each event, and the general location where each event occurred;
- c) a description of the injuries Plaintiff suffered; and
- d) the relief Plaintiff seeks, such as money damages, injunctive relief, or declaratory relief.

Essentially, Plaintiff's amended complaint should tell the Court: who violated her federally protected rights and how; when and where such violations occurred; and why Plaintiff is entitled to relief.

Because Plaintiff's amended complaint will completely replace, not supplement, the original complaint, any facts or claims that Plaintiff wants to include from the original complaint must be repeated in the amended complaint.

### **CONCLUSION**

Plaintiff is granted leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within 60 days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 22-CV-3044 (LTS). An Amended Civil Rights Complaint form is attached to this order. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and she cannot show good cause to excuse such failure, the complaint will be dismissed for failure to state a claim upon which relief may be granted.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an

appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: May 31, 2022  
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN  
Chief United States District Judge

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Write the full name of each plaintiff.

\_\_\_\_ CV \_\_\_\_  
(Include case number if one has been assigned)

-against-

**AMENDED**

**COMPLAINT**

Do you want a jury trial?

☐ Yes ☐ No

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Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.



## I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- ☐ **Federal Question**
- ☐ **Diversity of Citizenship**

### A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

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### B. If you checked Diversity of Citizenship

#### 1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, \_\_\_\_\_, is a citizen of the State of  
(Plaintiff's name)

\_\_\_\_\_  
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

\_\_\_\_\_.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, \_\_\_\_\_, is a citizen of the State of  
(Defendant's name)

\_\_\_\_\_  
or, if not lawfully admitted for permanent residence in the United States, a citizen or  
subject of the foreign state of

\_\_\_\_\_  
If the defendant is a corporation:

The defendant, \_\_\_\_\_, is incorporated under the laws of  
the State of \_\_\_\_\_

and has its principal place of business in the State of \_\_\_\_\_

or is incorporated under the laws of (foreign state) \_\_\_\_\_

and has its principal place of business in \_\_\_\_\_.

If more than one defendant is named in the complaint, attach additional pages providing  
information for each additional defendant.

## II. PARTIES

### A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional  
pages if needed.

First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
Current Job Title (or other identifying information)		
Current Work Address (or other address where defendant may be served)		
County, City	State	Zip Code



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**INJURIES:**

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

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**IV. RELIEF**

State briefly what money damages or other relief you want the court to order.

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**V. PLAINTIFF'S CERTIFICATION AND WARNINGS**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

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Dated		Plaintiff's Signature	
<hr/>			
First Name	Middle Initial	Last Name	
<hr/>			
Street Address			
<hr/>			
County, City	State	Zip Code	
<hr/>			
Telephone Number		Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes   ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.